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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,	)	Case No.: 2:14-cr-207-LDG-VCF
	)	
Plaintiff,	)	EMERGENCY MOTION FOR STAY OF
	)	MAGISTRATE JUDGE'S ORDER
vs.	)	
	)	
MICHAEL BLUMENTHAL,	)	
	)	
Defendant.	)	
	)	
	)	

The United States of America, by and through Daniel G. Bogden, United States Attorney, and Sarah E. Griswold, Assistant United States Attorney, moves this Court to stay the release of the above-named defendant and order the defendant detained pending the United States' appeal of the order releasing the defendant.

The defendant led a multimillion dollar investment fraud that victimized hundreds of people. He personally profited \$4,000,000. He lied to Pretrial Services about his employment and income in the hope of getting released. He is facing a prison sentence of 14 or more years after trial. He has lived his entire life in Canada, his wife and two young children live in

1 Canada, and returning to Canada requires little or no documentation. The defendant has no  
2 reason to stay in this country and face the instant charges. If he returns to Canada, extradition  
3 proceedings could take years.

#### 4 **PROCEDURAL BACKGROUND**

5 On June 17, 2014, a Grand Jury sitting in Las Vegas, Nevada issued a criminal  
6 indictment charging defendant MICHAEL BLUMENTHAL with Conspiracy To Commit Mail  
7 Fraud and Wire Fraud, in violation of Title 18, United States Code, Section 1349; Mail Fraud,  
8 in violation of Title 18, United States Code, Section 1341; Wire Fraud, in violation of Title 18,  
9 United States Code, Section 1343; and Engaging in Monetary Transactions in Property Derived  
10 from Specified Unlawful Activity, in violation of Title 18, United States Code, Section 1957.

11 On June 23, 2014, the defendant made his initial appearance pursuant to Rule 5(c)(3) in the  
12 Northern District of New York. (N.D.N.Y. Case No. 8:14-mj-222-LAK, Doc. 3.). On June 26,  
13 2014, the defendant waived his right to a detention hearing in the Northern District of New  
14 York, and was remanded to the custody of the U.S. Marshal's Service. (N.D.N.Y. Case No.  
15 8:14-mj-222-LAK, Docs. 4, 5.).

16 The defendant made his initial appearance in the District of Nevada before United States  
17 Magistrate Judge Nancy J. Koppe on July 11, 2014. (Doc. 8.) At the defense's request, the  
18 detention was continued to July 15, 2014. (*Id.*) Magistrate Judge Carl W. Hoffman presided  
19 over the detention hearing at which the Government requested detention, and the defendant  
20 requested release with conditions. The court set preliminary conditions of release, and  
21 continued the detention hearing to July 17, 2014, to allow the parties to collect information and  
22 to prepare paperwork to effectuate the court's conditions. (Doc. 17.) At the conclusion of the  
23 detention hearing on July 17, 2014, the magistrate court ordered release with conditions. The  
24 hearing was subsequently continued to July 18, 2014 and July 21, 2014. (Docs. 19, 20.) At the

1 conclusion of the hearing on July 21, 2014, the magistrate court ordered release with conditions.  
 2 (Doc. 21.) Those conditions include Pretrial Services supervision, residing in New Jersey,  
 3 location motoring, and monetary bonds of \$50,000 and \$10,000 put up by family members. The  
 4 magistrate court stayed its July 21, 2014, release order 48 hours to allow the government time to  
 5 appeal the order. (Doc. 21.)

6 The United States will appeal the release order. As the United States believes that the  
 7 defendant is a significant risk of nonappearance, the United States asks this Court to stay its  
 8 order releasing the defendant and order him detained pending trial.

### 9 **LEGAL STANDARDS**

10 This Court reviews the magistrate court's order of release de novo, with no deference to  
 11 the magistrate court's decision. *United States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990).  
 12 The court shall order a defendant detained where no condition or combination of conditions will  
 13 reasonably assure the defendant's appearance. 18 U.S.C. § 3142(e). The government bears the  
 14 burden of showing by a preponderance of the evidence that the defendant poses a flight risk.  
 15 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). The judicial officer must consider  
 16 the following factors in determining whether there are conditions of release that will reasonable  
 17 assure a defendant's appearance as required: the nature and circumstances of the offense; the  
 18 weight of the evidence; the history and characteristics of the defendant; and, including the  
 19 nature and seriousness of the danger to any person or the community that would be posed by the  
 20 defendant's release. 18 U.S.C. § 3142(g).

### 21 **ARGUMENT**

#### 22 **1. Defendant's Conduct Supports Detention**

23 Michael Blumenthal and his codefendant, Jay Kahane, solicited people to invest in  
 24 companies to provide medical scanning service to hospitals that could not afford their own

1 equipment. Blumenthal and his coconspirators induced investors to part with money by  
2 making materially false and fraudulent statements to them, including but not limited to: (1) the  
3 qualifications and identities of participants in defendant's companies, and (2) that investors'  
4 money would be used to purchase portable imaging equipment that would be used at hospitals  
5 that could not afford their own imaging equipment, when defendant then and there well knew  
6 that he would not invest money in portable imaging equipment. (Doc. 1.) Blumenthal owned  
7 and controlled multiple companies in which victims invested. He concealed and attempted to  
8 conceal the fraudulent nature of his business by changing company names to make it more  
9 difficult for potential investors to find negative comments about his fraudulent investment  
10 scheme. (*Id.*)

11 The scheme the defendant oversaw was sophisticated. His companies were  
12 incorporated in Nevada, and investors were directed to mail paperwork and checks to Nevada.  
13 The defendant, however, did not operate out of Nevada. There was no office in Nevada.  
14 Paperwork and checks would be forwarded to the defendant outside of Nevada.

15 Approximately 300 people lost approximately \$6,000,000 as a result of the defendant's  
16 and Kahane's investment fraud. Of this, approximately \$4,000,000 is directly attributable to  
17 Blumenthal. The Government estimates that after trial, the defendant will be facing a  
18 Sentencing Guidelines range of at least 168-210 months of imprisonment.

19 The defendant lied to Pretrial Services about his employment history and income history  
20 for the time covered by the indictment. According to Pretrial Services' report in this case, the  
21 defendant told Pretrial Services that from 2006 to 2012 he worked as a salesperson making  
22 approximately \$35,000 per year. This directly contradicts the evidence in this case, as well as  
23 the defendant's statements to law enforcement. On June 25, 2014, pursuant to a proffer  
24 agreement, the defendant told law enforcement that Mobile Diagnostic Centers ("MDC") was a

1 company in his name and that he ran MDC's daily operations, that he hired doctors and a  
2 consultant for MDC. He said that others hired the telemarketers for MDC, and that he rarely  
3 spoke with investors on the telephone. He said he spoke with investors when they had  
4 complaints or when he gave them updates.

5 In the proffer, Blumenthal estimated that he received approximately \$3,000,000 in  
6 investor money, and that \$2,500,000 of this was spent on company expenses. He said that he  
7 kept only \$100,000 for himself. Evidence compiled during the course of the investigation in  
8 this case shows that Blumenthal received approximately \$4,000,000 in investor money.

## 9 **2. The Defendant's History and Characteristics Support Detention**

10 The defendant is a dual citizen of Canada and the United States. According to the  
11 Pretrial Services report, the defendant was born in Montreal, and has lived in that area his entire  
12 life. This would include the years during which he directed the fraud scheme charged in this  
13 case. It does not appear that Pretrial Services was able to run the defendant's criminal history in  
14 Canada or to obtain information about any appearances at court proceedings in Canada.

15 The defendant has two young children and a wife in Montreal. After trial, he will be  
16 facing a Guidelines range of 168-210 months in prison if he has no criminal history. He has no  
17 reason to stay in this country and face these charges.

18 The magistrate court ordered the defendant to surrender his passports and not to obtain  
19 new travel documents. The Government believes the defendant has both United States and  
20 Canadian passports. This condition, however, is no bar to the defendant returning to Canada.  
21 Canada allows its citizens to return with as little as a citizenship card, or with a government-  
22 issued identification and birth certificate. According to FBI Special Agent Kevin White, an ICE  
23 employee has informed him that Canada also allows its citizens to drive back into Canada  
24 without any such paperwork.

1 An extradition waiver would not alleviate the defendant's risk of non-appearance. The  
2 magistrate court also initially considered requiring the defendant to sign an extradition waiver to  
3 facilitate the defendant's return to this country if he flees. Because such a waiver is not  
4 enforceable in Canada, the court declined to require such a waiver. A letter from Canada's  
5 Department of Justice explains that "a waiver or consent to extradition entered into before a  
6 foreign [i.e., United States] court would not satisfy the requirements of the Extradition Act,  
7 which requires a fresh consent or waiver before an extradition judge after extradition  
8 proceedings have been commenced." (Ex. 1.) Thus, if the defendant flees to Canada and does  
9 not voluntarily return to the United States, the Government would have to commence  
10 extradition proceedings. A trial attorney from the United States Department of Justice's Office  
11 of International Affairs has informed the undersigned that extradition from Canada is difficult  
12 and slow, utilizes a lot of resources, and can take three or more years.

### 13 **CONCLUSION**

14 For the foregoing reasons, the United States requests that this Court stay the release of  
15 the defendant and order the defendant detained pending the United States' appeal of the order  
16 releasing the defendant.

17 DATED this 21st day of July, 2014.

18 DANIEL G. BOGDEN  
19 United States Attorney

20 /s/ Sarah E. Griswold  
21 SARAH E. GRISWOLD  
22 Assistant United States Attorney  
23  
24

**CERTIFICATE OF ELECTRONIC SERVICE**

This is to certify that the undersigned has served the foregoing EMERGENCY MOTION FOR STAY OF MAGISTRATE JUDGE'S ORDER on counsel of record by means of electronic filing.

DATED this 21st day of July, 2014.

/s/ Sarah E. Griswold  
Sarah E. Griswold